IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.4843 OF 2004

Shri.Vitthal Sahakari Sakhar
Karkhana Maryadit Gursale
Tal.Pandharpur, Dist.Solapur ...Petitioner

Vs.

Chandrabhaga Sahakari Sakhar
Karkhana Maryadit Bhaloni ...Respondent

And

The Honourable Chief Minister
and Honourable Minister for Cooperation
Govt. of Maharashtra & Anr. ....Respondents

....

Mr.A.V.Anturkar for Petitioner
Mr.A.S.Desai for Respondent no.1
Mr.A.H.Palekar AGP for Respondent nos.2 and 3

....

CORAM : B.H.MARLAPALLE,J.

DATE : MARCH 24,2005

P.C.:

1. Heard Mr.Anturkar, the learned counsel for the petitioner, Mr.Desai, the learned counsel for respondent no.1 and Mr.Palekar, the learned AGP for respodent nos.2 and 3.

2. Rule. Respondents waive service of notice of rule. Rule made returnable forthwith by consent of the parties.

3. The petitioner and respondent no.1 are the

Co-Operative Sugar Factories located in Pandharpur Taluka of Solapur District and are governed by the bye-laws framed by each of them. The respondent no.1 has the area of operation extending to 52 villages in Pandharpur Taluka as per its bye-laws and it wanted to enlarge its area of operation so as to include 55 more villages which are otherwise in the area of operation of the present petitioner. Accordingly, a resolution came to be passed on 14.11.1996 but it was not communicated to the Regional Joint Director within a period of two months as was required under the Rules. This period of two months had expired on 13.2.1997. Respondent no.1 submitted the proposal for amendment of the bye-laws on 1.1.1998 to the Regional Joint Director of Sugar at Pune who was pleased to reject the same after about five years on 6.6.2003. Thus, the resolution passed on 14.11.1996 came to be rejected on 6.6.2003 and it could not be acted upon during the interregnum.

4. The respondent no.1 being aggrieved by the order passed by the Regional Director on 6.6.2003 filed an appeal before the State Govt. and the Honourable Chief Minister who was also holding the portfolio of Minister for Corporation, was pleased to allow the appeal vide judgment and order dated 19.5.2004. The petitioner being the affected party, has challenged the said decision of the appellate authority.

5. On account of interlocutory order passed by this Court, the impugned order could not be acted upon and thus, the resolution passed on 14.11.1996 could not take effect till this date. Civil Application No. 1819 of 2004 has been filed by four Sugarcane growers from different villages in Pandharpur Taluka which were sought to be included within the area of operation of respondent no.1. They wanted to be impleaded as respondents so as to support the resolution passed on 14.11.1996. The petitioner has raised a grievance that the appellate authority did not deal with the prejudice likely to be caused to the petitioner if the proposed amendment was allowed and it would be infact defeating the very purpose of establishing the Petitioner-Karkhana. The Joint Registrar was aware of the relevant obtaining circumstances including the hardships to the sugarcane growers from these 55 villages which were sought to be added in the area of operation of the respondent no.1 Karkhana and having known these ground realities, he had rightly rejected the resolution more so, when it was not submitted within the stipulated period. The Resolution had become stale by the time it was submitted to him, as per the Petitioner-Karkhana. The respondent no.1 on the other hand, fully supports the impugned decision of the appellate authority.

6. Instead of examining the merits of the arguments advanced by the respective parties and the averments set out in the petition, it would be expedient that the respondent no.1 is allowed to go through the process afresh to pass a resolution, right from the first step. Nonetheless, the order passed by the lower appellate authority upsetting the view taken by the Joint Registrar, is indefensible and it requires to be set aside. In the fresh process, the respondent no.10 may follow the procedure strictly as per the guidelines and ensure that the working of the Petitioner-Karkhana is not affected as far as possible. In any eventuality, both of them must survive and prosper in harmony.

7. The petition is therefore allowed partly and the impugned order passed in the Appeal bearing No.APP 1304/CR-4/15-C is hereby quashed and set aside. The respondent no.1 Karkhana is at liberty to initiate fresh proposal for amendment of its bye-laws so as to increase its area of operation by following the due process as set out in its bye-laws and the Rules applicable.

8. Rule partly made absolute in the above terms with no order as to costs.

[B.H.MARLAPALLE,J.]